

holiday), your notice is timely if you issue it on Tuesday, July 3, even though that is 91 days before the proposed termination date.

(3) *Counting months.* Suppose you are required to issue a Participant Notice two months after December 31. The deadline for the Participant Notice is the last day of February (the 28th or 29th). If the last day of February is a weekend or Federal holiday, your deadline is extended until the next day that is not a weekend or Federal holiday.

### Subpart E—Electronic Means of Record Retention

#### § 4000.51 What are these record retention rules about?

The rules in this subpart E of part 4000 tell you what methods you may use to meet any record retention requirement under our regulations if you choose to use electronic means. The rules for who must retain the records, how long the records must be maintained, and how records must be made available to us are contained in the specific part where the record retention requirement is found. (Subpart A tells you what filing methods you may use for filings with us and how we determine your filing date. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time.)

#### § 4000.52 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

*We* means the PBGC.

*You* means the person subject to the record retention requirement.

#### § 4000.53 May I use electronic media to satisfy PBGC's record retention requirements?

*General requirements.* You may use electronic media to satisfy the record maintenance and retention requirements of this chapter if:

(a) The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;

(b) The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);

(c) The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(d) The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(e) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records; and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system); and

(f) All electronic records exhibit a high degree of legibility and readability when displayed on a video display terminal or other method of electronic transmission and when reproduced in paper form. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize a

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group of letters or numerals as words or complete numbers.

### § 4000.54 May I dispose of original paper records if I keep electronic copies?

You may dispose of original paper records any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this subpart, except such original records may not be discarded if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

(Approved by the Office of Management and Budget under control number 1212-0059)

## PART 4001—TERMINOLOGY

Sec.

4001.1 Purpose and scope.

4001.2 Definitions.

4001.3 Trades or businesses under common control; controlled groups.

AUTHORITY: 29 U.S.C. 1301, 1302(b)(3).

SOURCE: 61 FR 34010, July 1, 1996, unless otherwise noted.

### § 4001.1 Purpose and scope.

This part contains definitions of certain terms used in this chapter and the regulations under which the PBGC makes various controlled group determinations.

### § 4001.2 Definitions.

For purposes of this chapter (unless otherwise indicated or required by the context):

*Affected party* means, with respect to a plan—

- (1) Each participant in the plan;
- (2) Each beneficiary of a deceased participant;
- (3) Each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA;
- (4) Each employee organization that currently represents any group of participants;
- (5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year

period preceding issuance of the notice of intent to terminate; and

- (6) The PBGC.

If an affected party has designated, in writing, a person to receive a notice on behalf of the affected party, any reference to the affected party (in connection with the notice) shall be construed to refer to such person.

*Annuity* means a series of periodic payments to a participant or surviving beneficiary for a fixed or contingent period.

*Basic-type benefit* means a benefit that is guaranteed under part 4022 of this chapter or that would be guaranteed if the guarantee limits in §§ 4022.22 through 4022.27 of this chapter did not apply.

*Benefit liabilities* means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

*Code* means the Internal Revenue Code of 1986, as amended.

*Complete withdrawal* means a complete withdrawal as described in section 4203 of ERISA.

*Contributing sponsor* means a person who is a contributing sponsor as defined in section 4001(a)(13) of ERISA.

*Controlled group* means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under § 4001.3 of this part. For purposes of determining the persons liable for contributions under section 412(c)(11)(B) of the Code or section 302(c)(11)(B) of ERISA, or for premiums under section 4007(e)(2) of ERISA, a controlled group also includes any group treated as a single employer under section 414 (m) or (o) of the Code. Any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

*Corporation* means the Pension Benefit Guaranty Corporation, except where the context demonstrates that a different meaning is intended.

*Defined benefit plan* means a plan described in section 3(35) of ERISA.

*Disclosure officer* means the official designated as disclosure officer in the Office of the General Counsel, PBGC.